

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PASHA S. ANWAR, et al.,

Plaintiffs,

-against-

FAIRFIELD GREENWICH LIMITED, et al., : 09 Civ. 118 (VM) (FM)

Defendants.

This Documents Relates to the
Standard Chartered Cases

USDC SDNY
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DISCOVERY ORDER

FRANK MAAS, United States Magistrate Judge.

I have reviewed the parties' submissions concerning the Standard Chartered Defendants' request to substitute a new expert in lieu of Ezra Zask because Zask has entered a guilty plea to one count of possession of child pornography. The Standard Chartered Plaintiffs (with one exception) oppose that request.

Although the Standard Chartered Plaintiffs are correct that Zask's conviction could be ruled an impermissible area of cross-examination (indeed, the Standard Chartered Plaintiffs represent that they will voluntarily forego any inquiry into that area), we live in an age when jurors often consult the internet notwithstanding judges' express instructions not to do so. (See, e.g., John Schwartz, As Jurors Turn to Web, Mistrials Are Popping Up, N.Y. Times, Mar. 17, 2009, available at http://www.nytimes.com/2009/03/18/us/18juries.html?pagewanted=all&_r=0). Were a juror to "Google" Zask despite Judge Marrero's instructions to the contrary, the first four items returned would all disclose Zask's legal difficulties. In any event, even if the Court were to assume that the jurors would honor a "no internet" pledge, the Standard Chartered Defendants have represented that Zask has resigned from his position as an expert in this case. Although the Standard Chartered Plaintiffs suggest that the report of another defense expert, Charles Porten, is virtually identical to that of Zask, the excerpts of their reports that have been furnished to the Court fail to convince me that this is necessarily correct.

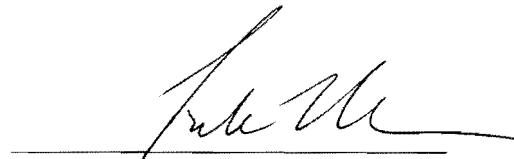
I therefore will permit the Standard Chartered Defendants to substitute another expert for Zask. The replacement expert, however, will not be permitted to

proffer a report or testify in a manner that is contrary to or inconsistent with Zask's report, nor may the expert testify to any matters not previously set forth in Zask's report.

Finally, although Zask evidently had yet to be deposed, the reasonable cost of the replacement expert's deposition transcript (and any video thereof if other experts' depositions are being videotaped) shall be borne exclusively by the Standard Chartered Defendants.

SO ORDERED.

Dated: New York, New York
January 6, 2014



FRANK MAAS
United States Magistrate Judge

Copies to:

Hon. Victor Marrero
United States District Judge

All Counsel via ECF